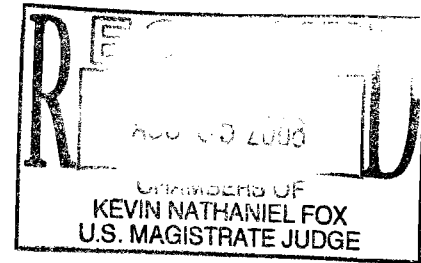


MEMO ENDORSED



MICHAEL A. CARDOZO
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

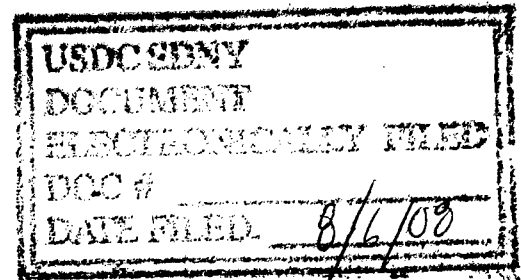
MORGAN D. KUNZ
Assistant Corporation Counsel
phone: (212) 788-0422
fax: (212) 788-9776
mkunz@law.nyc.gov

August 4, 2008

BY HAND

Honorable Kevin Nathaniel Fox
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Antoine Gumbs v. C.O. James, et. al.,
07 Civ. 10552 (RJH) (KNF)



Your Honor:

I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendant New York City Department of Correction (hereinafter "DOC") in the above referenced case. Defendant DOC respectfully requests that its time to respond to the amended complaint in this action be extended for 30 days from August 5, 2008 to September 4, 2008.¹ Plaintiff is incarcerated and proceeding *pro se*, and I have been unable to confer with him regarding this request; accordingly this application is made directly to the Court.

¹ A review of the docket sheet indicates that defendant Shahid has been served with a copy of the summons and amended complaint, however, to date this office has not received a request for representation from this defendant. On information and belief, defendants Brown and Singh have also been served with a copy of the summons and amended complaint. There is no indication whether the other individually named defendants, Rivers and James, have been served with a copy of the summons and amended complaint. As of this date, no request for representation has been received with respect to these defendants, nor does the docket sheet reflect service on these individuals. Without appearing or making any representations on behalf of any of the individually named defendants as to the adequacy of process or otherwise, it is respectfully requested that the same extension be granted to them in order to ensure that their defenses are not jeopardized while representation issues are being decided.

Plaintiff alleges that he was subjected to excessive force on August 16, 2006. Specifically, he claims that he was punched by a correction officer, he fell to the ground and that the officer kicked him in the head and chest as other officers held him down. Plaintiff also alleges that a number of officers witnessed the excessive use of force and failed to intervene. Plaintiff claims that he was fractured as a result of the incident, but that all charges were dismissed at a disciplinary hearing. Plaintiff claims that, in retaliation for the dismissal of the disciplinary charges, he was improperly placed on restricted visit status for 40 days.

There are several reasons for seeking an enlargement of time in this matter. First, in accordance with this office's obligations under Rule 11 of the Federal Rules of Civil Procedure, we need time to investigate the allegations of the complaint. Additionally, an enlargement of time in this matter is needed in order to determine whether, pursuant to Section 50-k of the New York General Municipal Law and based on a review of the facts of the case, the Office of the Corporation Counsel can represent the individually named defendants. See Mercurio v. The City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)). Despite my best efforts, I have been unable to complete the necessary representational investigation at this time. A 30-day extension of time will insure that the defenses of defendants Shahid, Brown, and Singh are not compromised while this Office completes its investigation. Further, assuming plaintiff effects timely service on defendants Rivers and James, the extension should allow time for this office to determine whether they too are eligible for representation.

No previous request for an extension has been made in this action. Accordingly, we respectfully request that defendants time to respond to the complaint be extended for 30 days, from August 5, 2008 to September 4, 2008.

I thank the Court for its time and consideration of this request.

8/6/08
Application granted.
SO ORDERED:
Kevin Nathaniel Fox
 KEVIN NATHANIEL FOX, U. S. M. J.

Respectfully submitted,

Morgan D. Kunz
 Morgan D. Kunz
 Assistant Corporation Counsel
 Special Federal Litigation Division

cc: Antoine Gumbs, Plaintiff *Pro Se*
 # 06-A-5888
 Attica Correctional Facility
 P.O. Box 149
 Attica, NY 14011 (By First Class Mail)